STATE OF MICHIGAN

COURT OF APPEALS

DIMITRIOS ZAVRADINOS,

Plaintiff-Appellee,

v

JTRB, INC., JTR II, L.L.C., RTI, INC., LITTLE DADDY'S OF BLOOMFIELD HILLS, MICHIGAN, L.L.C., RICHARD ROGOW, ATHANASIOS PERISTERIS, and DARREN MCCARTY,

Defendants,

and

ROBERT PROBERT,

Defendant-Appellant,

and

LIZA DANIELLE PROBERT,

Intervening Party-Appellant.

UNPUBLISHED
August 23, 2007

No. 268570
Oakland Circuit Court
LC No. 2004-062158-CK

Before: Fitzgerald, P.J., and Sawyer and O'Connell, JJ.

FITZGERALD, P.J. (*dissenting*).

Defendant Robert Probert and intervening party Liza Danielle Probert appeal as of right from a circuit court opinion and order rejecting their objections to plaintiff's garnishment of two brokerage accounts. The trial court determined that the accounts were subject to garnishment because they were owned as joints tenants with rights of survivorship, not as tenants in the entirety, and further, that plaintiff had overcome the presumption that the Proberts owned the accounts equally. I would affirm.

There is no dispute that property held by spouses as tenants by the entirety is not subject to garnishment because of MCL 600.6023a, and that the accounts involved in this case are within the categories of property governed by MCL 557.151. MCL 557.151 establishes that certain

personal property held by a husband and wife, including bonds and stock certificates, is subject to the same "restrictions, consequences, and conditions" incident to ownership of real property. Accordingly, the accounts are presumed held in an estate by the entireties "unless an intent to do otherwise is affirmatively expressed." *DeYoung v Mesler*, 373 Mich 499, 504; 130 NW2d 38 (1964).

The Proberts do not dispute that the presumption of tenancy by the entireties may be overcome, but contend that overcoming the presumption would require the accounts to "clearly state 'not as tenants by the entireties.'" However, this Court did not require that disclaimer in *In re VanConett Estate*, 262 Mich App 660; 687 NW2d 167 (2004). I would decline to impose such a requirement in this case.[1] The trial court determined that the evidence showed that the Proberts owned the accounts as joint tenants with rights of survivorship, not as tenants by the entirety. To the extent that the Proberts are challenging this determination, it involves an assessment of intent and a finding of fact. This Court reviews a trial court's findings of fact for clear error. MCR 2.613(C).

At the evidentiary hearing, plaintiff introduced an account application for an account held by the Proberts that was opened on December 24, 1998.[2] On that application, which the Proberts both signed, the type of account selected was "JRS Joint (*with rights of survivorship),*" while the box for "ENT Tenants by the Entirety," two lines below, was not selected. Janet Kemp, a financial consultant for Smith Barney, agreed that an individual who wanted to set up an account as tenants by the entirety could have done so. She testified that the accounts at issue are stock accounts opened in 2000 and 2001 by the Proberts as joint tenants with rights of survivorship. Plaintiff produced an "Application Detail Report" for each account indicating that the accounts were JTWROS (joint tenants with rights of survivorship). Liza Probert testified that she and Robert had been married since 1993. She did not testify regarding the Proberts' intent at the time the accounts were opened.[3]

In light of this evidence, the trial court's findings that the Proberts opened the accounts as joint tenants with rights of survivorship and that the Proberts intended to create an estate other than an estate by the entireties is not clearly erroneous. Plaintiff rebutted the presumption of a

---

[1] In *In re VanConett Estate*, the Court examined language in a deed conveying land to "HERBERT L. VANCONETT, ILA R. VANCONETT, and FLORENCE H. VANCONETT as joint tenants with full right of survivorship and not as tenants in common." This Court recognized that the presumption of a tenancy by the entireties "may be overcome by explicit language in the deed." *Id.* at 667, citing *DeYoung, supra* at 503-504. The Court held that the language used was sufficiently explicit. "[B]ecause explicit language was used, a tenancy by the entireties was not created between Herbert and Ila, and all three held the property as joint tenants with full rights of survivorship." *In re VanConett Estate, supra* at 667.

[2] The application for this account indicated that it was a "new account." This account predated the opening of the accounts at issue in this case and was the only account application entered into evidence.

[3] Robert Probert did not testify.

tenancy by the entirety by evidence demonstrating the Proberts' express intent to establish the investment accounts as joint tenants with rights of survivorship.

The Proberts further contend that even if the accounts are held in joint tenancy with rights of survivorship, Liza is presumed to have contributed half the balance in the funds and only the half attributable to Robert is subject to garnishment. See MCL 487.718.

The trial court correctly recognized that where an account is held under a joint tenancy, the co-owners are presumed to be equal contributors and equal owners. *Danielson v Lazoski*, 209 Mich App 623, 625; 531 NW2d 799 (1995); *Dep't of Treasury v Comerica Bank*, 201 Mich App 318, 328; 506 NW2d 283 (1993). However, the presumption may be rebutted. *Danielson, supra* at 626. Whether the presumption of equal ownership has been overcome is a question of fact. *Id*. at 629.

The Proberts essentially claim that where the joint owners are married, the presumption of joint ownership exists regardless of evidence concerning their contributions to the account. However, the respective contributions of spouses are relevant in overcoming the presumption of equal ownership in a joint account. For example, in *Sussex v Snyder*, 307 Mich 30; 11 NW2d 314 (1943), a husband and wife had a joint-deposit checking account. A judgment was entered against the husband, and the plaintiff sought to garnish the joint account. The Court noted that the plaintiff had failed to present evidence "showing what part of the money in the joint account, if any, had been deposited by either defendant [husband] or [his wife]." *Id*. at 37. "[I]n the absence of proof as to the amount contributed by either George or Elizabeth Snyder to the joint account, it is presumed that they were equal contributors and owners of the funds in such account." *Id*. at 38. The Court's statements indicate that actual contributions to the account by married individuals may overcome the presumption of equal ownership.

Here, the undisputed evidence at the hearing indicated that Liza did not make any contributions to the accounts. Under the circumstances, the trial court's finding that the evidence overcame the presumption of equal ownership is not clearly erroneous.

I would affirm.

/s/ E. Thomas Fitzgerald